

# DECISION



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

B-222430

**DATE:** June 12, 1986

**MATTER OF:**

Consolidated Aeronautics Corporation

## DIGEST:

1. A protest submitted after receipt of proposals contending that it is unnecessary for the government to test the items offered by the protester because they were previously bought at a government surplus property sale and must have been tested and approved before acceptance by the government is untimely since the RFP clearly stated that 100 percent of surplus items would be tested.
2. An evaluation factor to cover the cost to the government of 100-percent testing and inspection of former government surplus property offered in lieu of newly manufactured items is reasonable given the different levels of inspection required for surplus and new material and the critical nature of the item being acquired.

Consolidated Aeronautics Corporation (CAC) protests the decision of the Department of the Navy to add an evaluation factor to CAC's proposal price submitted in response to request for proposals (RFP) No. N00383-86-R-0129. This is a procurement to obtain flap support fittings for use in the flight control systems of A6 aircraft. Upon receipt of the protest, the Navy suspended further action pending our decision.

CAC offered fittings manufactured in 1967 that it had bought at a government sale of surplus property. After receipt of initial proposals and before best and final offers, the Navy amended the RFP to add to the price of any offer proposing surplus items an evaluation factor of \$1,600 to cover the Navy's cost of inspection and testing. CAC contends that such testing is unnecessary and discriminates against offerors of surplus property. In addition, CAC contends that even if testing were necessary, \$1,600 is unreasonable for testing such simple items.

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We dismiss the protest in part and deny it in part.

The issue as to whether the surplus property offered by CAC should be tested is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). These regulations require that alleged improprieties apparent in an RFP shall be filed before the closing date for receipt of initial proposals. The RFP here incorporated by reference Federal Acquisition Regulation (FAR) § 52.210-6 (1984), that permits offerors to propose former government surplus property. With regard to this clause, the RFP stated that if a contract is awarded for surplus items, 100 percent of them would be inspected and tested. While CAC has advanced numerous reasons why such inspection and testing is unnecessary, the RFP clearly conveyed to all offerors that surplus items would be tested and inspected. Thus, any objections CAC had to such testing should have been protested prior to the initial proposal due date of December 4, 1985, rather than March 21, 1986, more than 3 months thereafter. This issue will not be considered and is therefore dismissed.

This leaves for resolution the issues as to whether an evaluation factor for the cost of testing surplus items can be imposed upon CAC's price and, if so, whether the Navy's estimate of its cost is reasonable. The Navy conceded in its comments on the protest conference, that its initial \$1,600 evaluation factor for testing and inspection of surplus items was in error because of a mistake in the number of testing hours needed; it has since revised the amount to \$1,292.20 and intends to incorporate this clause in the request for best and final offers.

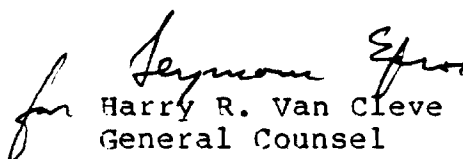
The RFP's section "M" "EVALUATION FACTORS FOR AWARD" provided that the cost of the government's "testing effort set forth in this solicitation is estimated to be \$947" and that this would be added for evaluation purposes to the prices of all offerors for whom the government will require testing. There was nothing in the RFP to indicate that the \$947 figure was intended to apply only to any first article tests for newly manufactured items. Thus, any objections CAC might have had to the imposition of a \$947 evaluation factor should also have been protested prior to the receipt of initial proposals as required by 4 C.F.R. § 21.2(a)(1).

With regard to the reasonableness of the \$1,292.20 evaluation factor for surplus items in the light of the \$947 evaluation factor contained in the solicitation (a difference of \$345.20), the contracting officer points out that given the critical nature of the items in question,

the lack of the original inspection or manufacturing data, no history as to how the items were stored either by the government or by the offeror since it acquired the items etc., the level of inspection and testing for surplus property is greater than that for newly manufactured items. The contracting officer also states that he did not contemplate receiving offers of surplus property when the solicitation was prepared and that therefore the cost of inspecting surplus property was not included.

While CAC has strongly suggested that the Navy is adequately protected because the original wrappers are available and the original manufacturer's inspection stamp indicates acceptance by the government, we are persuaded that the lack of any meaningful historical data provides a reasonable basis for the difference in inspection and testing costs that the Navy reasonably anticipates it will incur if a contract is awarded for the acquisition of surplus items. In other words, we are not in a position to conclude that the \$345 additional inspection cost for 100-percent inspection of 18 items as compared to the inspection and testing cost for two first articles<sup>1/</sup> is not reasonable. Moreover, the overall cost to the government of accepting former government surplus property, including inspection costs, is a factor to be considered by the contracting officer to ensure that prices paid for these items are reasonable. See FAR § 10.010(c) (1984). The Navy has provided complete documentation (labor hours, labor rates, overhead) to support its best estimate of the cost of the inspection of surplus items. We have no reason to disagree with the estimate. This basis for protest is denied.

The protest is dismissed in part and denied in part.

  
for Harry R. Van Cleve  
General Counsel

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<sup>1/</sup> It is clear that the only discriminating factor among manufacturers of new materials in so far as inspection is concerned is the inspection and test of first articles, since some offerors may qualify for a waiver of first article tests while all manufacturers are subject to inspection during manufacture and for final inspection and acceptance procedures.